IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9960 of 2001

with

SPECIAL CIVIL APPLICATION No 9961 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUMATINATH SHAHIBAUG CO.OP. HOUSING SOCIETY LTD.

Versus

GUJARAT STATE WAKF BOARD

Appearance:

1. Special Civil Application No. 9960 of 2001
   MS AMRITA THOKORE withMR MIHIR H JOSHI for Petitioner No. 1-2
   RULE SERVED for Respondent No. 1
   MR AI PATHAN for MR ABRARALI S SAIYED for Respondent No. 2
   NOTICE SERVED BY DS for Respondent No. 2
2. Special Civil Application No. 9961 of 2001
   MS AMRITA THAKORE with MR MIHIR H JOSHI for Petitioner No. 1
   RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. Though rule was issued on 5th July, 2002, nobody had appeared on behalf of respondent no. 1 Board. Thereafter, again on 17th September, 2004, the Court has granted time, but none appeared on behalf of the Board. The matter was listed before this Court on previous occasion and even today, also none appeared on behalf of respondent no. 1 Board. Hence, the matter is taken up for hearing today.

2. The petitioners have by way of this petition challenged the Resolution dated 26th September, 2001 passed by respondent no. 1 at annexure-G as well as order dated 4th October, 2001 passed by respondent no.1, whereby, the Board has cancelled the order dated 31st July, 2000 for grant of land on lease basis.

3, I have heard the learned advocate for the respective parties and have perused the relevant record. Ms. Amrita Thakore with Mr. Mihir Joshi learned advocate for the petitioner has submitted that the impugned orders are in gross violation of principles of natural justice inasmuch as the respondent being a Statutory Authority and, in view of the provisions of Section 56 (2), of the Act, the respondent Board cannot restrict the grant of lease of Wakf property. The said Section reads as under:-

Section 56 (2) :

> A lease or sub-lease for a period exceeding one year and not exceeding three years of immovable property which is wakf property shall, nothwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and no effect unless it is made with the previous sanction of the Board."

3.1. Moreover, in the present case, previously the sanction was granted by the wakf Board, after hearing the persons who has entered into the agreement with the petitioners an agreement to that effect was executed in favour of the petitioners, which is at annnexure-B and

annexure-C to the petition. Further it appears that, the respondent Board, had thereafter passed Resolution behind the back of the petitioners, cancelling the sanction for the lease granted to them.

4. I find force in the submission of the learned advocate for the petitioner. However, the respondent Board being a Statutory authority and since rights are crystallized in favour of the petitioners by executing the lease deed, the petitioners ought to have been heard before passing any order adverse to them. Apart from that, inspite of the notice and rule served upon respondent Board, the respondent Board has thought it fit not to appear before this Court.

5. Looking to the peculiar facts and circumstances of the case, and looking to the statutory provisions, in the interest of justice, the following directions are issued :-

5.1. The impugned orders at annexure-G and annexure-F are quashed and set aside. The matter is remanded to respondent Board for deciding the matter afresh. The respondent Board while hearing the petitioners shall also take into consideration the registered lease deed executed in favour of the petitioners. The respondent Board shall pass appropriate order after issuing notice to the petitioners. It will be open for the petitioners to file their reply and raise all the contentions which has been raised in the present petition.

5.2. It is clarified that the respondent Board shall hear and decide the matter without being influenced by the earlier orders which are quashed and set aside in the present petition and also the present order passed in the present petition, since the same has been passed without entering into the merits of the case.

6. Rule is made absolute to the aforesaid extent with no order as to costs.
Direct Service to respondent no. 1 is permitted.

[K.S. JHAVERI, J.]

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